

## II. REMARKS

In the above-referenced patent application, please enter the amendment and reconsider the application in view of thereof. It is believed that no new matter has been added.

In the Office Action mailed 24 July 2009, the claims have been made subject to a restriction/election requirement. The Examiner contends that claims 1-17, 22-45, and 47-48 correspond to Group I and claims 18-20 and 46 correspond to Group II. In response, Applicant elects Group I with traverse and requests reconsideration, with new claims 49-53 to be included in Group I.

The requirement is improper at least for the following reasons.

First, the Examiner has not established that the claims cover inventions that are separate and distinct and have separate utility, as required by Sec. 121. The requirement does not show consideration of linking claims, e.g., claims 25-26 of Group I linking to the claims of Group II. Reconsideration is respectfully requested.

Second, the Examiner must consider the new claims, linking claims with respect to the Groups. Reconsideration is again requested.

Third, the Examiner has not established that the claims are related as combination and sub-combination, especially in view of the new claims. MPEP Sec. 806.05(d) requires "Care must be taken to determine if the subcombinations are generically claimed. Where subcombinations as disclosed and claimed are both (a) species under a claimed genus and (b) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to related inventions. If restriction is improper under either practice, it should not be required." The requirement fails to show the determination required in MPEP Sec. 806.05(d), and reconsideration is requested.

Fourth, the requirement is also improper for noncompliance with MPEP Sec. 806.05(d), which requires "restriction is only proper when there would be a serious burden if restriction

were not required, as evidenced by separate classification, status, or field of search." The requirement appears to rely on separate class/subclasses. However, there is no indication in the Office Action that the examination and searches will not be in more than one class/subclass, which Applicant believes should not be the case, so as to preclude searching and examination with respect to all classes/subclasses set out in the Office Action. The Examiner contentions in reliance on the separate classes/subclasses being a fact alleged by the Examiner, evidence is required by the Applicant, e.g., a declaration or affidavit is hereby required. Additionally, pursuant to Rule 104 and 35 U.S.C. Sec 132, the requirement based on separate class/subclasses fails to provide any "information" regarding propriety of the classification, and this information is required. Absent evidence, the requirement is improper, and such evidence is required, e.g., a declaration or affidavit. Reconsideration is requested.

Fifth, there is no evidence to support the Examiner's contention of a "serious burden" in the requirement. Respectfully, an Examiner's contention does not necessarily make the contention true as a matter of fact, and Applicant disputes the contention. The contention being a fact alleged by the Examiner, in view of Rule 104 and Sec. 132, evidence is required by the Applicant, and the Examiner's declaration or affidavit is hereby required. Absent evidence, the restriction requirement is improper. Reconsideration is requested.

Sixth, while criteria from the MPEP are set forth on page 3 of the Office Action, there is no indication in that any of them are applicable to the instant case. The requirement is therefore improper under 35 U.S.C. Sec. 132, Rule 104, and the MPEP for failing to provide sufficient "information." Reconsideration is again requested.

With respect to the present application, the Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer, if any, and the prior art that it was made to avoid, may need to be revisited. Nor should a disclaimer, if any, in the present application be

read back into any predecessor or related application.

If allowance is not forthcoming, Applicant requests an interview with the Examiner.

**APPLICANT CLAIMS LARGE ENTITY STATUS.** The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235, and if any extension of time is needed to reply to said office action, this shall be deemed a petition therefore.

Please direct all communication to the undersigned at the address given below.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'PK Trzyna', with a long horizontal flourish extending to the right.

Date: September 30, 2009

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